

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.**

APPEAL FROM ORDER NO.350 OF 2003.

Sanjeev Chandrakant Chavan	..Apellant.
VS	
Subodh Narhar Pathak.	..Respondent.

Shri H.T. Pawar for the appellant.

Shri R.B. Paranjape i/b S.P. Narvekar for respondent.

**CORAM: V.C.DAGA, J.
DATED: 19-08-2004.**

ORAL JUDGMENT

. This appeal is directed against the order dated 7.2.2003 passed by the City Civil Court, Bombay, making Notice of Motion bearing N.M. No. 4345 of 2001 in S.C. Suit No.5208 of 2001 absolute. In view of this order of temporary injunction defendant came to be restrained from conducting coaching classes, or tuition classes in any manner whatsoever in the vicinity and jurisdiction of area of Kandivli with further injunction restraining defendant from doing any act, deed or things adversely affecting the interest of Nirmal Coaching/Academy Classes with further order restraining him from disturbing or dealing with their teachers, students and their parents in any manner whatsoever.

The Facts:

2. The facts giving rise to the present appeal in nutshell are that the appellant was serving as a teacher in Nirmal Academy run by the respondents since the year 1991-92. Appellant resigned from the said Academy on 25.1.2001. The respondent, while accepting resignation obtained a declaration/bond from the appellant whereby appellant declared that he had no interest or claim in the coaching classes or "Nirmal Academy" or any of its sister concerns/allied organisations or branches operated and/or to be operated in future. Under the said declaration, he had also declared that he will not run any such academy or class within the jurisdiction of area Kandivli and shall not cause any loss and/or harm to the business or goodwill of Nirmal Academy operating within the limits of Kandivli. He also undertook that, after his resignation from the said academy/coaching classes, he will neither work with any other organisations nor cause any harm or loss to the business of Nirmal Academy. In other words, appellant was made to agree not to run coaching classes within the area of Kandivli.

3. In consideration of executing this declaration-cum-bond, respondent - original plaintiff agreed to pay Rs. 2,50,000/- out of which an amount of Rs.33,603/- was paid in cash; whereas an amount of Rs. 1,25,000/- was paid by cheque dated 29.1.2001. Balance amount of Rs. 91,397/- was paid by another cheque dated 29.7.2001. Out of the above two cheques, cheque for Rs. 1,25,000/- dated 29.1.2001 was dishonoured by the bankers of the plaintiff-respondent, with the result appellant was paid Rs. 1,58,603/- only.

4. The plaintiff alleged that the appellant-defendant thereafter, opened coaching classes under the name and style "Prabhat Classes" in the area of Kandivli, at a distance of about 10 minutes by walk from the Nirmal Academy run by the plaintiff. Plaintiff with a view to enforce declaration-cum-bond signed by the defendant/appellant filed suit for Declaration and injunction and prayed for interim injunction as described in the opening para of this judgment.

5. On being served, defendant appeared and opposed prayers for injunction. In defence he urged that the agreement is void under section 27 of the Contract Act. He further submitted that the terms of

declaration-cum-bond were breached by the plaintiff himself as the cheque for Rs. 1,25,000/-, which was issued by the plaintiff was dishonoured by his banker as such the plaintiff did not fulfil the terms of the contract. Plaintiff, therefore, was not entitled to claim equitable relief of injunction.

6. The trial Court, after hearing rival parties was of the view that consideration which was paid by the plaintiff was in the nature of goodwill and that an agreement was in the nature of reasonable restraint of trade. It was, therefore, enforceable at law.

7. The trial Court found favour with the submissions made by the plaintiff. In the result, the trial Court made Notice of Motion absolute and granted injunction in terms of prayer (a). This order of the trial Court is the subject matter of challenge in this appeal.

8. Having heard learned Counsel appearing for the rival parties, I am of the opinion that the question involved in this appeal can be decided on narrow contentions.

9. One of the contentions sought to be canvassed is that looking to the conduct of the plaintiff, the

plaintiff rendered himself disentitled to claim equitable relief of injunction in his favour. In my considered view, this contention needs acceptance irrespective of the fact whether or not the contract in question is hit by section 27 of the Contract Act. The plaintiff is not entitled to the equitable relief of injunction in view of the principles laid down by the Apex Court in the matter of grant of injunction under Order 39 Rules and 2 of C.P.C. In the case of Gujarat Bottling Co. Ltd & ors. vs. Coca Cola & ors. AIR 1995 SC 2372 Supreme Court has observed as follows:

"In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39, Rule 1 or

Rule 2 of the Code of Civil Procedure but also in respect of the party approaching the Court for vacating the ad-interim or temporary injunction order already granted in the pending suit or proceedings."

10. In view of the above, the conduct of the plaintiff needs to be scrutinised. It is an accepted fact that terms and conditions of the bond were breached by the plaintiff himself. If that be so, plaintiff was not entitled to ask for equitable relief of injunction. On this count alone, interim injunction ought to have been refused by the trial Court.

11. In this appeal, learned Single Judge of this Court at the time of admission of this appeal vide her order dated 25.11.2003 was pleased to grant interim stay to the impugned order of the trial Court subject to deposit of Rs. 1,50,000/- by the appellant. It would be reasonable and in the interest of justice to place this amount at the disposal of the trial Court to be dealt with subject to the result of the suit, as the defendant also cannot be allowed to take advantage of his own act if he is found to have committed breach of the terms and conditions of the bond. In my considered view, this direction will place both parties on same level playing field.

12. The trial Court is directed to dispose of the suit as expeditiously as possible, at any rate, within a period of 1 1/2 years from the date of receipt of copy of this order. In the meanwhile, amount of Rs.1,50,000/- shall stand invested with any nationalised bank for a period of 18 months.

13. In the result, impugned order is quashed and set aside. Appeal is allowed in terms of this order with no order as to costs.